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ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A. 1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE P.O. BOX 3791 ORLANDO, FL 32802-3791			EXAMINER BROOKS, MATTHEW L	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal 2009-004554
Application 10/085,403
Technology Center 3600

Decided: October 20, 2009

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-32 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We AFFIRM¹.

THE INVENTION

The Appellant's claimed invention is directed a method including installing in a vehicle a remote control device which includes a controller and wireless receiver to permit the wireless enabling of a customer selected remote control feature package (Spec. 3:22-26). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A method of providing a customer-selected remote control feature package in a vehicle, the method comprising:

installing a universal remote control device in the vehicle, the universal remote control device comprising a controller and a wireless receiver cooperating therewith for permitting wireless enabling of the customer-selected remote control feature package from among a plurality of possible remote control feature packages;

¹ Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii) (2007).

negotiating sale or lease of the vehicle with the customer and comprising

offering the plurality of possible remote control feature packages to the customer, and

accepting an order for the customer-selected remote control feature package from the customer; and

wirelessly enabling the customer-selected remote control feature package for the universal remote control device.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Treyz US 6,526,335 B1 Feb. 25, 2003

The following rejections are before us for review:

1. Claims 1-32 are rejected under 35 U.S.C. § 102(e) as anticipated by Treyz.

THE ISSUE

At issue is whether the Appellant has shown that the Examiner erred in making the aforementioned rejections.

This issue turns on whether Treyz discloses “wireless[ly] enabling the customer-selected remote control feature package for the universal remote control device” when given the broadest reasonable interpretation in light of the Specification.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:²

FF1. Treyz discloses an automobile personal computer system (Title) with wireless communication capabilities (Col. 1:28-31). Settings for the personal computer system may be adjusted using computing devices that are separate from the automobile personal computer (Col. 1:60-63).

FF2. Treyz discloses that a user may log onto a web site and subscribe to a digital satellite service available from the automobile manufacturer (Col. 22:24-27).

FF3. Treyz discloses that data that enables the automobile personal computer to obtain the satellite service may be downloaded to the personal computer. The user may provide a code for the personal computer to activate the service (Col. 22:29-34).

FF4. Treyz discloses that the services may include music services, news services, communication services, and data services (Col. 22:56-58) and satellite radio (Col. 22:64).

FF5. Treyz discloses that a wireless device such as a key chain may be used to control the automobile personal computer (Col. 23:23-25).

FF6. Treyz discloses that a wireless key chain device and personal computer may be used to open the door locks, start the engine, adjust the heat and air conditioning, control the wipers, and control the headlights and rear defogger (Col. 23:29-41).

² See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

PRINCIPLES OF LAW

Principles of Law Relating Claim Construction

We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

Principles of Law Relating to Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim.

ANALYSIS

The Appellant argues that the rejection of claims 1, 16, and 27 is improper because Treyz fails to disclose “wirelessly enabling the customer-selected remote control feature package for the universal remote control device”. (Br. 10). The Appellant reiterates this statement in the Reply Brief at page 3. The Appellant states that Treyz does teach wirelessly enabling satellite radio and a vehicle with remote control features, but that Treyz does not disclose wirelessly enabling remote control features as claimed (Br. 10). The Appellant argues that claims 1 and 16 also recite limitations to

negotiating the sale or lease of the vehicle not found in the Treyz reference (Br. 10-11).

In contrast the Examiner has determined that Treyz discloses wirelessly enabled features from a remote key chain including a GPS system (Ans. 10). The Examiner has also determined that Treyz discloses the ability to remotely subscribe to digital satellite radio services meeting the claimed limitations (Ans. 10-11).

We agree with the Examiner. We begin with claim construction. The Specification states:

“The universal remote control device 30 includes *a controller* and a wireless receiver cooperating with the controller to permit *wireless enabling of the customer-selected remote control feature package from a plurality of possible remote control feature packages*”

(Spec. 7:7-12, emphasis added).

Giving the term “wireless enabling the customer-selected remote control feature package for the universal remote control device” in claim 1 its broadest reasonable interpretation in light of the Specification, we construe this term to broadly require the wireless enabling of a customer-selected remote control feature package for the universal remote control device. There is no limitation placed on what package specifically may be wirelessly enabled in this claim construction.

Turning to Treyz, it is disclosed that a user may subscribe to digital satellite service that is available from the automobile manufacturer over a web site (FF2). The automobile personal computer is provided with a code to activate the services (FF3). The services may include for example music services, new services, and data services (FF4). Thus we determine that the

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automobile personal computer serves as a “remote control device” to activate or “enable” the customer selected satellite radio “music package” wirelessly, meeting the claimed limitation. There is no limitation in claim 1 that would prohibit the “remote control feature package” from being selected from the packages of music services, new services, or data services received by satellite radio. The recitation of “negotiating sale or lease of the vehicle with the customer” is considered inherent in sale or lease of the vehicle. For these reasons, the rejection of claim 1, and claims 16 and 27 which contain a similar cited limitation is sustained. The Appellant has not argued for the dependent claims 2-15, 7-26, and 28-35 separately and the rejection of these claims is sustained for the same reasons.

CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1-32 under 35 U.S.C. § 102(e) as anticipated by Treyz.

DECISON

The Examiner’s rejection of claims 1-32 is sustained.

AFFIRMED

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